

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Amy Patterson,)	
)	
Plaintiff,)	
)	CV 15-0494-PHX-NVW
vs.)	
)	Phoenix, Arizona
Two Fingers LLC, et al.,)	May 20, 2015
)	2:13 p.m.
Defendants.)	
)	

BEFORE: THE HONORABLE NEIL V. WAKE, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Motion Hearing)

APPEARANCES:

For the Plaintiff:

STROJNIK FIRM LLC

By: **Peter Strojnik, Sr., Esq.**

By: **Peter Strojnik, Jr., Esq.**

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Phoenix, Arizona 85016

For the Defendants:

HYMSON GOLDSTEIN & PANTILIAT PLLC

By: **Eddie A. Pantiliat, Esq.**

By: **Jason R. Mullis, Esq.**

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PROCEEDINGS TAKEN BY STENOGRAPHIC COURT REPORTER

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P R O C E E D I N G S

THE COURT: Please be seated.

THE COURTROOM DEPUTY CLERK: This is Civil Case
2015-494, Amy Patterson versus Two Fingers, LLC, et al. This
is the time set for a motion hearing.

02:13:26

Counsel, please announce your presence for the
record.

MR. STROJNIK, SR.: Your Honor, my name is Peter
Strojnik, Bar Number 6464. I represent the plaintiff Amy
Patterson and counterdefendant Amy Patterson and Peter K.
Strojnik, who are present in the courtroom.

02:13:37

MR. PANTILIAT: Good afternoon, Your Honor. I'm Ed
Pantiliat. I represent defendants and counterclaimants Two
Fingers, Four Fingers and Six Fingers, as well as the Popo
defendants and counterclaimants.

02:13:54

MR. MULLIS: Good afternoon, Your Honor. Jason
Mullis representing defendants as well.

MR. PANTILIAT: Mr. Popo is present.

THE COURT: Mr. Popo.

And Mr. Popo is -- is he the sole owner of these
restaurants in question?

02:14:01

MR. PANTILIAT: No. He is a co-owner, Your Honor.

THE COURT: All right.

All right. Good afternoon to all.

I set this to discuss this Document Number 30 Motion

02:14:16

1 for Order Prohibiting Defendants From Intimidating Witnesses
2 and Threatening Counsel.

3 All right. I'll hear from you all but first I have
4 some preliminaries.

5 Counsel, the things that are addressed here are 02:14:51
6 unprecedented in my experience in any lawsuit by any lawyer.
7 Some of the things. Of course, I do not know whether they are
8 true, I only know what is alleged.

9 Secondly, this Court is going to process this case in
10 a way that decides the case on the merits in a fair and 02:15:08
11 accurate way, expeditiously, and that does not allow the
12 litigation itself to be used to abuse other people in the
13 process. Any party or attorney who behaves in a way that
14 incurs liability or responsibility for professional misconduct
15 will have to answer to that if called to task for it, whether 02:15:36
16 it be by additional pleadings, claims asserted in this lawsuit
17 or some other lawsuit, or additional proceedings before the
18 State Bar. My responsibility is to process this case and I
19 will do that and I will do everything in my power to prevent
20 this litigation process from being abused to cause collateral 02:15:56
21 harm to anyone.

22 Now, I do have a preliminary question for -- I --
23 because we have two Mr. Strojniks here, is it acceptable if I
24 refer to you as Mr. Strojnik, Sr. and Mr. Strojnik, Jr.?

25 MR. STROJNIK, SR.: That would be great, Your Honor. 02:16:18

1 THE COURT: All right.

2 All right. Mr. Strojnik, Sr., have you addressed --
3 and I don't want to -- I'm not asking you the substance of any
4 communication you've had with your client. I'm just asking a
5 yes-or-no question. Have you thought through the conflict of 02:16:30
6 interest you have in this case in representing both Miss
7 Patterson and Mr. Strojnik, Jr. in the same matter? Have you
8 thought that through?

9 MR. STROJNIK, SR.: I have initially -- you want a
10 yes or no? 02:16:47

11 THE COURT: Well, actually, you can answer that
12 however you want, just be clear that I'm not asking you to
13 disclose the substance of any communications you've had with
14 any client.

15 MR. STROJNIK, SR.: May I approach the podium? 02:16:57

16 THE COURT: You may.

17 MR. STROJNIK, SR.: Thank you.

18 Thank you, Your Honor.

19 Obviously, a conflict is always an issue that needs
20 to be addressed by an attorney. I have addressed these issues 02:17:10
21 in my mind. It is important for me to point out that Peter
22 Strojnik or Strojnik PC and the Strojnik Law Firm are
23 completely separated and separate and individual law firms. I
24 can tell you that I have no information that would make my
25 representation here subject me to potential 3.7 rule. 02:17:28

1 I can also tell the Court that in my opinion, which,
2 of course, is subject to greater minds, that in my opinion
3 there is no conflict between my representation of
4 Miss Patterson and my representation of Mr. Strojnik.

5 Further, should there be such a conflict, it is my belief that 02:17:50
6 a conflict would be waived if asked for.

7 But in response to your question whether I have had
8 specific discussions, the answer is I have not up to this
9 point.

10 THE COURT: So the short answer is you have not, as 02:18:06
11 of this point in time, advised your client of conflicts and
12 obtained consent or waiver yet.

13 MR. STROJNIK, SR.: I have discussed with my client
14 my position in this case. I have discussed with my client the
15 matters that have been raised. Have I actually sat down with 02:18:21
16 her and said this is a potential conflict or this is a
17 possible conflict? Not to this point, Your Honor. That, of
18 course, does not mean that will not occur in the very near
19 future.

20 THE COURT: Let me address with you what seems rather 02:18:36
21 obvious to me, and, of course, the Court's concern is that
22 this case be processed in a way that is without unnecessary
23 delay and obstruction. It does appear -- and again, I go by
24 the papers I've read. I don't have any knowledge of
25 underlying facts other than what I'm reading as being alleged. 02:18:53

1 The conflict appears rather apparent because Mr. Strojnik, Jr.
2 is alleged to have advised and led his client into a course of
3 defamation of the defendants, including participation by
4 himself as a principal, and that defamation could render both
5 her and him liable.

02:19:20

6 Now, having been the person who both advised it and
7 participated as a principal, he could be just as liable as her
8 for any of that, and if liability is established
9 Miss Patterson, it seems -- again, I'm not making any final
10 pronouncement about anything. I'm just commenting what
11 appears on the surface of things. But it does appear that
12 Miss Patterson would have a claim over against
13 Mr. Strojnik, Jr. for all of the liability that is adjudicated
14 against her for having followed what appears to be his advice
15 and participating in this course of defamation. If that's the
16 case, the conflict would appear to be quite severe.

02:19:42

02:20:02

17 And as I'm sure you know, waivable conflicts are
18 limited. Sometimes they can be waived and sometimes they
19 cannot. When a conflict is too severe, it can only be waived
20 if there's full disclosure to the client, which is clear that
21 it's not yet happened with Miss Patterson, and if the lawyer
22 believes honestly that the conflict will not impair his
23 ability to represent both clients and it's not, you know, too
24 serious.

02:20:20

25 So it does appear this would be an unwaivable

02:20:39

1 conflict with this course of action.

2 Now, I don't -- I don't say this for the purpose of
3 putting you on the spot or even expecting an answer. I say
4 this because I'm charged with processing this case. There's a
5 problem here. I want it to be addressed so that we can
6 proceed with counsel who is ethically permitted to proceed and
7 not delay this case.

02:20:57

8 And I guess finally, even if you do obtain a consent
9 from Miss Patterson to represent both her and your son, with a
10 consent to be effective there has to be full disclosure and
11 full understanding, and you and your son will be at risk that
12 at the back end, if things go badly for her, you, as lawyer
13 for her, will be open to a lawsuit for not having obtained
14 adequate consent.

02:21:22

15 Now, this situation, at least on the surface of it
16 with the limited awareness I have from just reading your
17 papers, appears to be of utmost gravity of both conflict in
18 interest both for ethical responsibility and civil liability
19 to you and your son.

02:21:46

20 So again, I don't know that -- well, the Court
21 doesn't have authority -- well, let's put it this way: I
22 don't -- I'm not quite sure of exactly the boundaries but in
23 general the Court doesn't disqualify counsel because they have
24 a conflict between their own clients. It's certainly not
25 something that's available to the opposing party to raise just

02:22:09

02:22:28

1 because the clients, your two clients, would have a claim. An
2 opposing party can raise that if and when it seriously
3 threatens to cause harm to them. It's not enough just that
4 you will have ethical liability and civil liability to one or
5 both of your clients for continuing. My general sense is the 02:22:49
6 Court has probably the same limitation.

7 So I am -- I point this out. I just want to make
8 clear that you understand, at least, the initial concern I
9 have.

10 MR. STROJNIK, SR.: Your Honor, first of all, I want 02:23:05
11 to thank the Court for the frank discussion about this matter.
12 This is obviously a matter that needs to be addressed
13 immediately.

14 As you will recall, I became involved in this case
15 when a character conflict developed between previous counsel 02:23:17
16 and current counsel for the parties. I came in as more of a
17 peacemaker than anything else, and the Court will recall that
18 my first appearance in this court resulted in voluntary
19 agreements to abide by the requests of the defense counsel.

20 I would also like to point out to the Court what I 02:23:41
21 consider to be rather good news in this case, and that is that
22 there has been a level of cooperation in this case since my
23 appearance, that there have been agreements reached with
24 respect to a number of -- at least two issues. The issue of
25 whom should not be contacted directly. The issue of whether 02:24:00

1 or not the original verified complaint or counterclaim filed
2 by counsel adequately states a claim. These issues have been
3 addressed both by e-mails, they have been addressed by
4 personal consultation.

5 So it was my hope that my presence in this case would 02:24:18
6 essentially parrot Your Honor's concerns.

7 THE COURT: Well, my comment in no way suggests
8 anything about whether you are or would do a good job. I'm
9 just talking about the conflict of interest that could get you
10 all sued and Bar disciplined. 02:24:38

11 MR. STROJNIK, SR.: Right. No. I think that's a
12 point that needs to be addressed and shall be addressed
13 forthwith.

14 THE COURT: All right. Now --

15 MR. STROJNIK, SR.: In light of that, Your Honor, let 02:24:47
16 me ask the Court whether or not this matter today should
17 continue or whether I should be allowed a week to --

18 THE COURT: I'm proceeding today. This matter is
19 proceeding. You have to make your judgments about what you do
20 and what you are willing to answer for in terms of potentially 02:25:06
21 being sued, not just your son but you, too, and answer with
22 the Bar. I have a matter of urgency here and I will address
23 it.

24 Now, with respect to this motion seeking permission
25 to reopen this web page -- and I remind you all that when we 02:25:29

1 were in court the last time you all reached an agreement and
2 there is no injunction. I entered no injunction. Therefore,
3 there's no need to lift an injunction.

4 The question that I think you're presenting to me,
5 Mr. Strojnik, is you want me to give you some clearance in 02:25:54
6 advance as to what you can say and how about Mr. Popo and his
7 company. There is no injunction in place. At this point,
8 technically, the defendants have not sought an injunction.

9 So I -- the first thing I want to be clear with all
10 of you, I am not going to give an advance determination or 02:26:18
11 permission to do any of this publicity you seek. That is not
12 my responsibility, and indeed, it is the responsibility of
13 parties and counsel to obtain competent, accurate legal advice
14 and to take courses of action, and if lawyers give bad advice
15 and if clients act on advice that turns out to be bad advice, 02:26:53
16 there may well be consequences. There may be consequences in
17 terms of the processing the lawsuit. There may be
18 consequences in terms of civil liability and additional
19 lawsuits. There may even be consequences in terms of
20 professional responsibility in having to answer to the State 02:27:13
21 Bar for that.

22 But I am not disposed to give you absolution in
23 advance to do any of this. It is -- as I said, it is the
24 responsibility of clients and lawyers to evaluate the law, to
25 ascertain it accurately, and to conform their conduct to what 02:27:34

1 the law allows without the adverse consequences that I've
2 listed.

3 So I put this in the question I put out to you as to
4 whether I should just enter an injunction stopping all this
5 publicity, at least beyond the direct investigation of 02:27:55
6 witnesses and matters involving the allegations in this suit.
7 And that would mean putting an end to your public
8 advertisement for anything bad of a similar character the
9 defendants have ever done requiring you to inform the other
10 side before something and then the Court could resolve 02:28:16
11 disputes.

12 I have done that successfully with some other kinds
13 of discovery disputes, but as I think about it, the problem
14 with that is that you would still be asking me to determine in
15 advance what you can do and not do. 02:28:40

16 I put this on the table and we will discuss this
17 fully. I'll hear from both of you as to what your thoughts
18 are.

19 But my thought now is that, Mr. Strojnik, you and
20 your client have to decide what you can and may do and what 02:29:02
21 you're willing to answer for, and you -- if you are -- if you
22 consider this well and you take courses of action that do not
23 subject you to serious risks of liability, there will be no
24 disputes that arise. If you are wrong, if you take
25 inappropriate risks, then you do things, and then the other 02:29:30

1 side can decide whether they want to take action. I'm
2 assuming that will be a prompt renewal of the motion for
3 temporary restraining order.

4 But if it comes to that, I will then have actual
5 facts to address. I would be looking at what you have done 02:29:47
6 rather than abstractions about what you say you would like to
7 do. What you've done is what you and your client are willing
8 to answer for legally in court both as to new claims against
9 you and as to consequences for processing this case, and if
10 there are violations there could be a variety of consequences, 02:30:12
11 including exclusion of evidence that might otherwise be
12 permissible.

13 Right now I'm thinking that has the disadvantage of
14 causing harm to the other side if you do things that cross
15 over the line but I have a feeling you're going to get sued if 02:30:30
16 you do something they think crosses over, not just you but
17 your son, also, Mr. Strojnik.

18 MR. STROJNIK, SR.: If it crosses the line, of
19 course, Your Honor. It has never been the intent of new
20 counsel, nor has -- nor shall it ever be to cross the line on 02:30:45
21 any matter.

22 THE COURT: You know, I'll tell you, what you put
23 here in this brief as what you want authorized is
24 breath-taking. I'm not authorizing that or anything. You're
25 going to have to decide what you're actually willing to do. 02:30:58

1 So that's what I put on the table on that issue.

2 Before I invite your comments, and then I'll want to
3 also hear from Mr. Pantiliat on this point, I'm not quite sure
4 from your brief or your motion, Mr. Strojnik, but it does
5 appear to me that you're contemplating setting up this web 02:31:29
6 page and doing other publications as well that you're
7 participating, too, and I'll tell you if you do things that
8 appropriately result in you getting sued, too, then you
9 clearly will have disqualified yourself for that additional
10 reason. 02:31:55

11 Now, again, I've just -- I'm not expressing any final
12 judgment about this but I look at this web page where you
13 reference, republish the pleadings that you've filed in this
14 case. I guess I assume you think that your client and your
15 son have no liability for the defamatory content of that 02:32:23
16 because they're court pleadings. I won't put you on the spot
17 but I just assume you think that.

18 That's not correct. The privilege of republishing
19 court pleadings that have defamatory content in and of
20 themselves does not apply to your client or your son or you. 02:32:43

21 And if you want to check that out, just check the
22 Second Restatement of Torts, Comment 611 -- Section 611,
23 Comment (c)(2) that talks about this and says that the
24 privilege of republication does not apply to the person who
25 originally filed the court pleadings with defamatory content 02:33:13

1 and did so with privilege, but the republication by that
2 person is not privileged, and nor was republication done by
3 someone else with the cooperation, collusion of that person.

4 So I look at these pleadings that you have linked to
5 and it's -- I urge you to look at this law because it does 02:33:36
6 appear that your son has rendered himself and his client
7 liable in defamation for the defamatory content of those
8 pleadings, and if you participate in that you'll be personally
9 liable as well.

10 Now -- so if -- that really goes to what it is that 02:33:58
11 you may choose to continue to do.

12 So I'm going to invite the comments from both counsel
13 about what I've laid out as a different proposal from what I
14 put in my question.

15 MR. STROJNIK, SR.: Your Honor -- 02:34:12

16 THE COURT: And that proposal is I do nothing, I'll
17 wait and see what you do. The defendants can then seek an
18 injunction, maybe amend their counterclaim, add more
19 counterclaims, and that will create an occasion for me to
20 agrees what it is you can and cannot do, what you are supposed 02:34:26
21 to be able to figure out on your own and comport your conduct
22 and your clients' conduct with it.

23 Go ahead, Mr. Strojnik.

24 MR. STROJNIK, SR.: Your Honor, let me just state
25 that I am good of hearing and understanding and I fully 02:34:39

1 understand the Court's view on the matter. I believe that the
2 Court's view is guided by the desire to decide this case on
3 the merits. That is my desire as well. Because in our
4 complaint horrible things are alleged, bad things are alleged,
5 and we want those things to get in front of the jury.

02:35:03

6 We don't particularly care at this point about
7 websites. We don't particularly care -- I don't even -- I
8 don't myself do -- what is it? -- Facebook and all that
9 newfangled stuff that people get involved in.

10 THE COURT: Neither do I.

02:35:18

11 MR. STROJNIK, SR.: Well, there we go.

12 So the Court should not be surprised if I state right
13 at this very moment that the motion of which you speak is
14 hereby withdrawn, and that solves the issue, I believe.

15 I think that -- I think that the guidance is
16 appropriate. I think that focusing this case on the merits of
17 the case is appropriate. I believe that a clear discussion of
18 who represents whom in this case is appropriate. And I
19 believe that ultimately, ultimately, when the initial fatigue
20 of litigation subsides and emotions go away somewhat that a
21 positive relationship going toward resolution of the primary
22 claims will be established.

02:35:33

02:35:55

23 It has been my experience that sometimes it takes
24 nine months, and I call the nine-month period the fatigue
25 period. After nine months people just get tired. It is my

02:36:14

1 hope --

2 THE COURT: I'll tell you -- I'm sorry to interrupt
3 you because I don't want you to lose your train of thought. I
4 have most of my cases done within nine months. Over. I move
5 them fast. I get them decided on the merits. I don't let
6 people get fatigued by the burden and expense of litigation to
7 the extent it's possible to prevent it.

02:36:26

8 MR. STROJNIK, SR.: Neither do I.

9 And, Your Honor, if I can just share socially, my
10 practice is to invite counsel to my house or for a breakfast
11 and we smoke cigars, drink beer and talk. And the reason for
12 that is not so much to decide the case, because cases don't
13 get decided in backyards smoking cigars and drinking beer,
14 they get decided in the courtroom, the purpose of that is so
15 that the opposing counsel knows who I am, so I know who he is,
16 so that when we talk we go by the first name and we talk like
17 people who know one another. That has been -- I had a
18 two-hour meeting with a lawyer just about ten days ago in the
19 backyard.

02:36:41

02:36:59

20 So this is our intent. Our intent is to streamline
21 the case. That's my intent.

02:37:15

22 And that's all I want to share with the Court, but I
23 do thank the Court for its view on the matters raised, and if
24 the Court will accept my motion to withdraw the motion of
25 which we speak --

02:37:33

1 THE COURT: Let me hear from Mr. Pantiliat about
2 that.

3 MR. STROJNIK, SR.: There is one more issue that I
4 wanted to raise. You haven't raised it in your initial
5 remarks but I can raise it perhaps later. 02:37:42

6 THE COURT: Let me -- I -- I like to take things one
7 issue at a time. I have some more things to talk about. The
8 communications with employees is a separate issue. I want to
9 talk about that.

10 MR. STROJNIK, SR.: Correct. 02:37:52

11 THE COURT: And this issue -- your request for an
12 injunction against them filing Bar complaints is a third
13 issue. But let's talk about this issue first.

14 MR. STROJNIK, SR.: Thank you.

15 THE COURT: Mr. Pantiliat, I don't know what you need 02:38:03
16 to say but you're free to say what you think.

17 MR. PANTILIAT: I'm not quite sure where we stand,
18 Your Honor. If Mr. Strojnik is withdrawing his motion with
19 regard to a request for the reopening of the website, we would
20 consent to that withdrawal, we have no objection to that, as 02:38:16
21 long as there's not another motion that's going to come down
22 the pike another week or month from now asking to reopen it.
23 Otherwise, we'll go forward with the injunction that we
24 originally requested.

25 THE COURT: Well, if we need to go forward it will be 02:38:30

1 based on what they're doing at the time. It will be focused
2 on those facts and not on, you know, abstract concerns.

3 MR. PANTILIAT: Correct, Your Honor.

4 THE COURT: All right. Then let me -- let me
5 address, then, this issue of interviewing witnesses. 02:38:43

6 Oh. By the way, I did have a further comment on this
7 issue about the general publicity.

8 It does appear to me, Mr. Strojnik, that your
9 legitimate interest in finding witnesses to Miss Patterson's
10 lawsuit is adequately taken care of by your pursuit of 02:39:05
11 witnesses for which you or she has some reason to think that
12 they have knowledge relating to the incidents that she
13 alleges.

14 Your desire to generally publish about the terrible
15 things Mr. Popo does on the theory that you also want to have 02:39:19
16 in your trial every other sexual harassment he's ever done is
17 highly dubious under Rule 403 of the Rules of Evidence, which
18 allows the Court to limit evidence to what has probative
19 value, is not distracting, not a waste of time, and I can tell
20 you it is very unlikely that you would ever be allowed to try 02:39:40
21 multiple cases in your trial.

22 We also have the obvious severe collateral harm being
23 done to the defendants and their business by this general,
24 public, worldwide defamation, defamation that may be true, I
25 do not prejudge that, but it's clearly harmful. It is clear 02:40:03

1 here that it is an intended purpose and an obvious purpose to
2 cause that harm. And so I appreciate that you've withdrawn
3 your motion, but the Court would deal with that if I have to.

4 Now, with respect to interviewing employees, I have a
5 somewhat similar thought on that, Mr. Strojnik, and that is 02:40:31
6 what you have posed up is matters of extreme generality. It
7 is -- you're asking me to give you -- to tell you how you may
8 investigate this case and to give you absolution in advance,
9 which I'm -- I don't think it's practical to do that but it's
10 somewhat the same situation in that we have the principals 02:40:59
11 here and if you have potential witnesses that you want to
12 contact, you need to investigate the law with a mind to the
13 consequence of being wrong, which is likely to exclude
14 witnesses and perhaps other things as well if you have
15 improper contact with them without their attorney present, and 02:41:23
16 again you can decide what you're going to do.

17 Now, prudent lawyers, if it's not clear, will contact
18 the other lawyer and tell him and find out if there's a
19 dispute. If you do that, you get a little caution from that
20 from bringing disputes to the Court on specific matters with 02:41:43
21 specific witnesses whose circumstances can be examined, but if
22 you don't, again, that will be up to Mr. Pantiliat, if he
23 thinks you have crossed over the line, to seek whatever relief
24 he thinks your conduct has warranted. The most obvious thing
25 is exclusion of evidence, but there might other remedies as 02:42:04

1 well.

2 The alternative would be for me to undertake these
3 wide-ranging abstract instructions. Your client pays you for
4 legal advice to prepare a case, and that's your job, not mine,
5 so...

02:42:21

6 MR. STROJNIK, SR.: Your Honor, moments ago when you
7 referred to a prudent lawyer I felt a feeling of warmth
8 succumb over my body, and that is because this is exactly what
9 I had done. I contacted counsel -- or counsel contacted me
10 and says we object to your contacting our witnesses. And I
11 said, well, can you please tell me who these witnesses are and
12 we won't contact them. And I received an e-mail back -- and
13 this, by the way, is how I want to conduct this case -- and it
14 came back that they don't want us to contact Lucas Schott and
15 Michael Stidham. This was by e-mail dated April 27, 2015.

02:42:34

02:42:53

16 And we obviously -- even though we don't agree that
17 these witnesses fall within Lang, I think that it's
18 appropriate to give counsel deference on these matters and if
19 he doesn't want us to contact them --

20 THE COURT: It's real easy. If they're worthwhile
21 witnesses, you notice their deposition, you take their
22 deposition.

02:43:13

23 MR. STROJNIK, SR.: Exactly. And as the Court knows,
24 whenever somebody tells you don't talk to this person they are
25 the first to be deposed.

02:43:24

1 Your Honor, was there --

2 THE COURT: Well, I guess -- again, Mr. Pantiliat, is
3 there anything you want to say on that issue?

4 MR. PANTILIAT: Yeah, I do want to be heard a little
5 bit on that, Your Honor. 02:43:37

6 There are the witnesses since -- thank you.

7 When we sent that e-mail we were only aware at the
8 present time of those two witnesses. Since sending that
9 e-mail, we have now been aware that they've contacted other
10 witnesses. So obviously that e-mail would blanket those 02:43:53
11 witnesses as well.

12 THE COURT: Are these current or former employees?

13 MR. PANTILIAT: They're two current managerial
14 employees, Your Honor.

15 THE COURT: But I thought you just said there were 02:44:07
16 some others as well.

17 MR. PANTILIAT: Oh. And there is a former employee
18 as well, Your Honor, who is not managerial.

19 THE COURT: A witness who would have been a witness
20 to conduct in issue here as opposed to just the business in 02:44:22
21 general?

22 MR. PANTILIAT: I believe so, Your Honor.

23 And they've also alleged that he has information that
24 forms their basis that we've committed tax fraud, we've hired
25 undocumented workers -- 02:44:42

1 THE COURT: I've stricken that, haven't I?

2 MR. PANTILIAT: Okay.

3 But this witness may have other information related
4 to the harassment claim as well. We have not yet spoken to
5 this former employee.

02:44:51

6 THE COURT: Do you have plans to do that or --

7 MR. PANTILIAT: Yes, we do, Your Honor.

8 THE COURT: Is that former employee cooperating with
9 you?

10 MR. PANTILIAT: Yes, he is. As a matter of fact,
11 Your Honor, he actually leases a condominium from one of the
12 owners of the restaurants.

02:44:56

13 THE COURT: I'm sure you'll want to talk to that
14 person --

15 MR. PANTILIAT: Most definitely.

02:45:06

16 THE COURT: -- and find out if there's anything that
17 matters here.

18 MR. PANTILIAT: Yes.

19 THE COURT: All right.

20 So again, I'm not going to give advance approvals.

02:45:11

21 If, in fact, Mr. Strojnik, you have that discussion about
22 interviewing a witness and -- you know, as a practical matter,
23 Mr. Pantiliat, you know who these people are. Of course, if
24 they're internal people you can talk to them. If they're
25 external people they may talk to you. You can find out

02:45:34

1 whether they do or do not wish to speak with Mr. Strojnik
2 outside of court proceedings, or at least outside your
3 presence, and if the answer is no there's nothing for me to
4 resolve.

5 So those are the practicalities that need to be 02:45:49
6 worked through before any court motion would be appropriate.

7 I -- well, I'm -- Mr. Strojnik, I'm just sure that
8 Miss Patterson is going to have a good idea what people would
9 have been privy to what incidents she bases this lawsuit upon.

10 So I -- you don't have to respond to that, but -- 02:46:18

11 MR. STROJNIK, SR.: I'm just suggesting this is the
12 right way to go. I think counsel for the defendants
13 understands the people he doesn't want me to talk to and I
14 won't talk to them.

15 THE COURT: All right. 02:46:28

16 The third item is this motion to restrain,
17 threatening Mr. Strojnik about Bar complaints. It is clear to
18 me from reading this there has been no threat. It is
19 perfectly appropriate and sometimes it's ethically required of
20 lawyers to file a Bar complaint, you file it. There's been no 02:46:43
21 indication here of a threat to do it. And I understand from
22 the briefs there are Bar complaints pending, and there may be
23 more Bar complaints filed, but, you know, there's nothing for
24 me to restrain because there's nothing before me to suggest
25 that there has been a threat. And there's nothing wrong with 02:47:01

1 him later on disclosing to you that he did file those Bar
2 complaints.

3 So again, I don't think there's really anything for
4 me to do there.

5 Do you want to be heard on that, Mr. Strojnik? 02:47:16

6 MR. STROJNIK, SR.: I just wanted to mention that
7 this was a motion filed by former counsel who is no longer
8 counsel. In my reply regarding that motion I thought I was
9 clear in pointing out that that is no longer an issue in the
10 case, because nobody has threatened me that I -- 02:47:30

11 THE COURT: I mean even Mr. Strojnik, Jr. There's no
12 threat to him, either.

13 MR. STROJNIK, SR.: They can threaten me all they
14 want and we'll come to court if it's inappropriate.

15 THE COURT: Anything on that, Mr. Pantiliat? 02:47:44

16 MR. PANTILIAT: No, Your Honor. I think you sufficed
17 it correctly.

18 THE COURT: All right.

19 Before we adjourn -- I think that's everything on
20 this but is there anything more that I haven't covered that I
21 should on this motion? Mr. Strojnik? 02:47:54

22 MR. STROJNIK, SR.: Your Honor, there is. The
23 primary motion here has been expressed in our concern that
24 there has been an attempt to intimidate some of the witnesses
25 in the case. 02:48:11

1 THE COURT: I don't see any evidence of that. They
2 can talk to their people. They can talk to their former
3 employees. Tell me what this is.

4 MR. STROJNIK, SR.: Well, Your Honor, there were
5 e-mails exchanged -- I mean text messages exchanged between 02:48:21
6 Amy Patterson and a fellow named --

7 THE COURT: I've read all that. Yeah.

8 MR. STROJNIK, SR.: That is not -- that is not the
9 crux of the motion. The crux of the motion comes actually in
10 the reply. Because a person who feels threatened is not 02:48:37
11 necessarily threatened; just feeling something is not enough,
12 but when that person then discusses the matter with someone
13 who has power and control over that person, such as the
14 employer or the counsel for the employer, and that witness
15 then completely changes his testimony, there is cause for 02:49:01
16 concern, in my opinion.

17 And the cause for concern is that the initial
18 conversation was not between people who were in disparate
19 positions, one having control or power over the other. It was
20 communication between two friends and it was communication 02:49:23
21 that was free of any threat or fear or intimidation or
22 potential retribution.

23 But when such communication is denied in a later
24 affidavit which follows a discussion between the witness and
25 the witness's employer or the agent for the witness's employer 02:49:45

1 and the witness entirely disputes and denies the statements
2 previously made, I believe that because of the particularity
3 of the power of the employer over the employee, I think it
4 becomes an issue.

5 As the Court is aware, the employer has the right to 02:50:06
6 fire the employee for whatever reason, good or bad, and --

7 THE COURT: He also has a right to talk to his
8 employees.

9 MR. STROJNIK, SR.: I'm sorry?

10 THE COURT: He also has the right to talk to his 02:50:15
11 employees.

12 MR. STROJNIK, SR.: Absolutely. He has the right to
13 talk to the employees. But the question becomes -- and I am
14 vaguely familiar with the case law that says when a witness
15 changes her testimony there has to be some explanation as to 02:50:26
16 why.

17 THE COURT: You're talking about testimony given in
18 deposition or otherwise under oath. We're not talking about
19 that here.

20 MR. STROJNIK, SR.: I'm not talking about that. I 02:50:36
21 know what the Court is referring to. I know that series of
22 cases.

23 My concern, Your Honor, is that this has been an
24 extraordinarily emotional case and I believe that all parties
25 had allowed their emotions to get the better of them, and 02:50:52

1 perhaps some of them have made errors of judgment, not
2 necessarily because of some evil intent or evil mind but
3 because emotions have a tendency for people to do that.

4 My concern is that, not particularly in the case of
5 Mr. Campillo, because the jury is going to hear from him, they 02:51:11
6 will know all about what happened, I'll depose him and that's
7 going to be resolved through trial, but my concern is that
8 there might be others whose opinions might be colored by the
9 power and the control of the defendant employers. And I would
10 like to have that avoided at all cost because I will not 02:51:36
11 always be able to find out whether this had occurred.

12 That's all I have on that.

13 THE COURT: So what do you seek in that respect, what
14 relief?

15 MR. STROJNIK, SR.: What I seek, Your Honor, is 02:51:52
16 simply a reminder to all, as the Court had done earlier this
17 afternoon, that intimidation, suggestion, threat, or anything
18 like that addressed to a potential witness is inappropriate
19 and will not be tolerated and that upon a proper motion action
20 will be taken if the motion turns out to be correct. 02:52:17

21 THE COURT: All right. Mr. Pancreatitis, your
22 response?

23 MR. PANTILIAT: Thank you, Your Honor.

24 We have not engaged in any intimidation of any
25 witnesses. There were text messages that were sent sometime 02:52:31

1 prior to the litigation. We were only made aware of them
2 after they'd been disclosed during the pleading stages of this
3 litigation. We thereafter contacted the individuals
4 referenced in those text messages, who are current employees
5 and managers of the restaurant. We discussed the text 02:52:48
6 messages with them. We prepared declarations on their behalf,
7 which they signed willingly and voluntarily, and we submitted
8 that to the Court. We don't believe this request or motion
9 has any basis whatsoever.

10 Thank you, Your Honor. 02:53:03

11 THE COURT: All right.

12 Well, I'm going to issue a very short written order
13 that will not elaborate on what I've already said here. I
14 don't see any -- first of all, there's no basis for any Court
15 direction. There's no basis to think there's any misconduct 02:53:21
16 by the defendants with respect to witnesses. I've read all
17 this material. This all looks normal. I don't think there's
18 a basis for me to tell you what you all already know about the
19 ethical rules. This is a point of distinction with the other
20 things that I have talked with you about in which there is 02:53:40
21 grievous basis to be concerned about what has already happened
22 in this case.

23 So with that, that motion is taken under advisement.
24 We'll be adjourned.

25 (Proceedings recessed at 2:53 p.m.) 02:53:52

C E R T I F I C A T E

I, DAVID C. GERMAN, Official Court Reporter, do hereby
certify that I am duly appointed and qualified to act as
Official Court Reporter for the United States District Court
for the District of Arizona.

I FURTHER CERTIFY that the proceedings and testimony
reported by me on the date specified herein regarding the
afore-captioned matter are contained fully and accurately in
the notes taken by me upon said matter; that the same were
transcribed by me with the aid of a computer; and that the
foregoing is a true and correct transcript of the same, all
done to the best of my skill and ability.

DATED at Phoenix, Arizona, this 17th day of June, 2015.

s/David C. German
DAVID C. GERMAN, RMR, CRR